

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Restoring Internet Freedom)	WC Docket No. 17-108

COMMENTS OF TWILIO INC.

Dated: August 30, 2017

Twilio Inc. (“Twilio”) submits these comments in response to the Federal Communications Commission’s Notice of Proposed Rulemaking seeking comment in WC Docket No. 17-108.¹

EXECUTIVE SUMMARY

Twilio welcomes the opportunity to comment on Chairman Pai’s inquiries. Twilio brings a unique perspective to the issues raised in the NPRM as a relatively new entrant to the communications space and files these remarks on behalf of the 43,000 active businesses in more than 180 countries using Twilio’s platform to integrate telecommunications into their applications and products. While an open and accessible internet is a paramount issue for American consumers, Twilio files these remarks on behalf of the developers and users that are able to utilize Twilio’s U.S.-based platform, further powering the innovation economy all over the globe.

Over a million software developers have used Twilio to embed communications in their applications that allow users to hail a ride, make a bank transaction, shop online, authenticate an account, or contact elected officials. These communications interactions occur when users connect from their laptop or mobile device, and these billions of monthly interactions occur utilizing combinations of broadband and traditional wireline and wireless facilities.

Twilio makes the following points: 1) the success of innovators such as Twilio is in large part due to the existing competitive framework and thus, there is no need to reverse the current Open Internet Order rules; 2) modifications to or a lack of enforcement of the Open Internet Order rules would disproportionately disadvantage innovators and new entrants to the market, and such harms are already evident in other communications mediums; and 3) while the Commission should continue to provide regulatory oversight of and enforce existing net neutrality principles, any replacement regime should codify *ex ante* general conduct rules that prohibit arbitrary blocking.

¹ See Notice of Proposed Rulemaking WC Docket No. 17-108 Restoring Internet Freedom https://apps.fcc.gov/edocs_public/attachmatch/DOC-344614A1.pdf

I. The current competitive framework for broadband access under the Open Internet Order is working for the innovation economy and does not require modification.

Twilio was founded a few years after the phrase “net neutrality” was coined and as such is a relatively new company. Fast growth technology companies, including Twilio and the companies whose communications are powered by Twilio’s platform, rely on unfettered and equal access to the internet in order to innovate, deliver products and compete in the global marketplace. The dramatic growth of companies like Twilio and the companies that use Twilio occurred in a state of expectation that consumer access would not be arbitrarily blocked or throttled.

Under the current framework, Twilio today employs more than 800 professionals and its communications platform has grown to support more than 1.6 million software developers, serve more than 43,000 businesses, and power over 1.5 billion text messages and 1 billion voice minutes per month worldwide. In short, the current framework, in advance of and under the Open Internet Order, is working for the innovators that work for or use Twilio.

In paragraph 50 of the NPRM, the Commission seeks comment on whether “*there [is] evidence of actual harm to consumers sufficient to support maintaining the Title II telecommunications service classification for broadband Internet access service?*” In response, Twilio points to the blocking and discrimination prevalent on text messaging, a communications medium that is not currently afforded a clear transparency of rules or explicit forbearance mechanism, such as the bright-line conduct rules in the Open Internet Order under Title II. Twilio also counters that there does not appear to be evidence of harm to consumers or providers sufficient to support overturning the current classification for broadband or voice. Indeed, with respect to text messaging, anti-blocking protections should be expanded.

Protecting consumers and competition by a prohibition on blocking, throttling and paid prioritization practices while promoting the free flow of communications among consumers and

businesses has been a hallmark of FCC policy since the inception of the 1934 Communications Act. The proposed rulemaking would roll back key and essential protections that are in wide acceptance by and reasonably applicable to modern communication technologies, undermining the well-understood foundation upon which current telecommunications infrastructure was developed. Whether voice, broadband or text messaging, the FCC has the explicit authority and responsibility to prevent the negative effects of practices like paid prioritization and fast lanes on consumers and non-incumbents across communications mediums.

II. A lack of enforcement on blocking will disproportionately disadvantage innovators and harm consumers. Such harm is already evident in other communications mediums.

In paragraphs 79 through 82 of the NPRM, the Commission seeks comment on “*whether a codified no-blocking rule is needed*” and “*Do we have reason to think providers would behave differently today if the Commission were to eliminate the no-blocking rule?*” In a word: yes. The concern about blocking predates the Open Internet Order, as outlined by Twilio CEO Jeff Lawson’s TechCrunch Op/Ed in 2014 “A World Without Net Neutrality Already Exists.”² Twilio’s comments in the 2014 Open Internet proceeding demonstrate how consumers and the industry at large face an ongoing, real concern from network providers – mobile operators in particular – that arbitrarily block consumer access to content of their choosing, artificially limiting throughput, or otherwise refuse to route lawful content to and from the consumer’s desired destination.³

Consumers and innovators are disadvantaged when network providers, not the Commission, are charged with setting the rules. Allowing industry-set “voluntary no-blocking” regimes to prevail over enforceable bright-line rules comes at the cost of customer access to content. Indeed, this concern prompted Twilio to file a petition with the Commission in 2015, calling for the extension of non-blocking principles enjoyed by consumers and businesses in the voice and

² <https://techcrunch.com/2014/11/28/a-world-without-net-neutrality-already-exists/>

³ See Twilio comments in GN Docket No. 14-28 Protecting and Promoting the Open Internet <https://www.fcc.gov/ecfs/filing/6018251995>

broadband space to include text messaging.⁴ Both the initial Open Internet proceeding (GN 14-28) and Twilio's petition (WT 08-7) are replete with examples of network providers using their gatekeeper power to restrict consumer access to content, with a disproportionate and outsized impact to companies and nonprofit organizations with non-traditional, innovative use cases.⁵

In the absence of bright-line rules and Commission oversight and enforcement, the harm of blocking persists. In 2016, more than 100 million consented text messages were blocked by mobile operators on Twilio's platform alone, and in the first six months of 2017, more than 50 million consented messages have been filtered on Twilio's platform by mobile operators.⁶

Mobile operators continue to filter, i.e. block, consented text messages for their own commercial reasons, including to protect their own competing services, without regard to consumer choice. Blocking, throttling, and discriminatory content restrictions on messaging services traffic is not only a daily occurrence, but an increasing threat to the ubiquity and seamlessness of the nation's telephone network. Industry consolidation is a fact and virtually every incumbent mobile operator also provides internet data services.⁷ Undermining the net neutrality framework could incentivize mobile operators to further extend these anti-consumer blocking behaviors to voice and broadband services as well.⁸

⁴ See Twilio Petition for Expedited Declaratory Ruling (filed Aug. 28, 2015) WT Docket No. 08-7 <https://www.fcc.gov/ecfs/filing/60001299731>

⁵ Twilio, Netflix and Vimeo all comment on access throttling concerns in GN Docket No. 14-28 and raise the matter in comments on this docket as well. Over three dozen companies, advocacy groups and nonprofit organizations filed comments describing the blocking and throttling of text message communications in WT Docket No. 08-7. One example is CareMessage, a 501(c)3 organization that uses text messaging to promote appointment attendance and health interventions in disadvantaged communities. Mobile operators continue to block thousands of these text messages without notification and without regard to the fact that the consumer has opted in to receive these important reminders. <https://ecfsapi.fcc.gov/file/60001338394.pdf>

⁶ See Twilio ex parte and exhibits (filed Jan. 17, 2017) WT Docket No. 08-7 <https://ecfsapi.fcc.gov/file/10117896504859/Twilio%20Ex%20Parte%20and%20Exhibits%201%2017%202017.pdf>

⁷ The four largest mobile operators each offer internet data services. <https://www.att.com/internet/>, <https://www.verizon.com/home/highspeedinternet/>, <https://www.sprint.com/fastconnect/>, <https://www.t-mobile.com/company/company-info/consumer/internet-services.html>

⁸ Further, voluntary enforcement such as the CTIA messaging guidelines are insufficient to prevent adverse impacts on consumers through diminished technical outcomes of improper gatekeeper activity. As discussed in proceedings WT Docket No. 08-7 and WT Docket No. 95-155, some mobile operators force traffic routing of toll free number text messaging exclusively through a specific provider. A recent outage on that provider resulted in a delay of all inbound and outbound text messages to toll free numbers for over five hours and forty three minutes. <https://status.twilio.com/incidents/gv8hjkpwqgl>

III. The Federal Communications Commission is the appropriate regulator of bright-line rules for communications services.

Whether the general conduct rules of internet traffic are ultimately resolved through rulemaking or legislation, it is imperative that the Federal Communications Commission maintain regulatory oversight. Twilio argues that by virtue of its extensive technical expertise, statutory mandate, and transparent processes for rulemaking, it is the Commission that should oversee and enforce bright-line rules of competition and other measures that protect innovators and consumers. Absent such an approach, emerging companies like Twilio, and the customers and consumers Twilio serves, would be subject to arbitrary practices by a small but powerful group of network providers.

The Commission may argue “mutual exclusivity” of information services and telecommunications services in this proceeding, but the underlying fact remains that the Commission’s *ex ante* prohibitions are crucial to the competitiveness of the communications space. While both the Commission and the Federal Trade Commission may operate concurrently in their respective areas of enforcement, the Commission should not cede its role.

Ex post enforcement can be tremendously burdensome and cost-prohibitive to pursue, particularly for new entrants in the communications industry. If innovative companies, such as the startups powered by Twilio, were confronted by blocking or other anti-competitive behaviors and could only seek remedy through civil lawsuit or through action by the Federal Trade Commission, they would most certainly find the operational and legal cost of registering a complaint beyond their capacity. Further, the extensive delays of litigation or administrative procedural appeals could cause any adjudication to drag on for years – well beyond the time scale of the need for redress and counter to the agile and rapid pace with which new product concepts develop. Given limited resources, it is *ex ante* bright-line rules, not uncertain *ex post* enforcement, that allows innovators in the communications space to compete fairly.

The suggestion of transferring oversight is all the more troubling given the uncertainty over whether the Federal Trade Commission has jurisdiction over common carriers - or more broadly - whether the FTC has jurisdiction over any of a media company's activities should the company simultaneously offer common carrier services.⁹

Ultimately, regardless of classification and whether jurisdiction is shared between agencies, the bright-line and general conduct rules should be a starting point for any future enforcement regime.

CONCLUSION

Consistent with the foregoing, Twilio urges the Commission to maintain the Open Internet rules. To the extent any changes are made to the existing framework, the Commission or Congress should ensure that appropriate and accessible successor bright-line regulations are adopted by rulemaking or legislation.

⁹ See comment by FTC Commissioner Terrell McSweeney on this proceeding. Twilio shares the Commissioner's concerns: "Unless Congress repeals the common carrier exemption in the FTC Act, the FTC could continue to face challenges to its authority over common carriers." [https://ecfsapi.fcc.gov/file/10717579230144/McSweeney%20FCC%20Comment%20\(final\).pdf](https://ecfsapi.fcc.gov/file/10717579230144/McSweeney%20FCC%20Comment%20(final).pdf) Twilio further concurs with Federal Trade Commissioner Terrell McSweeney that antitrust and ban on deceptive advertising regulations are imperfect mechanisms to prevent blocking.